



Regional Water Quality Control Board and the Contra Costa County Water Agency were denied and the petition of the Department of Water Resources was granted for limited purposes. A further hearing was held on August 22, 1967, to receive additional evidence and argument regarding the seasons of diversion, date for completion of construction, protection of fish and wildlife, and the proposed Oroville-Thermalito power sales contract.

#### Seasons of Diversion from the Delta

Decision D 1275 excluded July, August, and September from the authorized seasons of diversion from the Delta. The reason for excluding these months, discussed in the decision beginning on page 26, was that the studies introduced by the Department at the hearing (Exh. 72 and related exhibits) showed that unappropriated water would have been available in the Delta during these months in only a few years during the 30-year period of study and then only in small quantities.

The Department contended in its petition that greater quantities of unappropriated water than were indicated by its previous studies will be available in the Delta for several years because the actual in-basin use of water will be less than the assumed in-basin rights due to the fact that some rights are still in a development period and all in-basin rights will not be utilized simultaneously at maximum rates.

The Department's exhibits and testimony demonstrated that for several years substantial quantities of unappropriated

water will probably occur in the Delta during July, August, and September that were not indicated by the evidence which was the basis for deleting these months from the seasons of diversion in Decision D 1275.

Exhibits 28 and 29 indicate that there has been more water actually available in July, August, and September in the years 1952 through 1967 than was estimated for these months in Exhibit 72 and related exhibits introduced at the original hearing. If the figures in Exhibit 29, which are based on actual measurements of inflow and diversions less assumed Delta Lowlands consumptive use, are reduced by 108,000 acre-feet per month assumed Delta outflow, the following quantities of water (expressed in thousands of acre-feet) were available in the Delta for diversion in July, August, and September during five of the last 15 years:

	<u>July</u>	<u>August</u>	<u>September</u>
1952 .....	985	296	441
1956 .....	410	250	568
1958 .....	632	411	693
1965 .....	252	340	606
1967 .....	1,358		

The magnitude of the quantities assures that there will be substantial quantities of water available in the Delta with an average frequency of one year in three even if the assumptions are in error by relatively large percentages. If the assumptions

are accurate, there was also some water available in the other ten years of the last 15 in all but three Julys and one August.

It is true, as argued by protestants, that DWR Exhibits 122 through 127 do not provide evidence of definite quantities of unappropriated water for comparison with DWR Exhibit 72, but Exhibits 122-127 provide examples of factors that will result in greater quantities of water being available for several years and DWR Exhibits 128 and 129 provide recent flow figures that indicate the frequency and magnitude of these quantities. When there is a reasonable expectation that substantial quantities of unappropriated water will occur during a particular month with such frequency that it can be put to beneficial use by the applicant, that month should be included in the season of diversion authorized in the permit.

It was argued that extending the seasons of diversion will have the effect of "tampering" with the relative priority of permits held by the United States and the State. As we said in Decision D 1275, the permits issued to the Department will be subject to vested rights; the Department may divert in compliance with special conditions in its permits and all applicable laws only when it can do so without interfering with the exercise of vested rights, including those rights of the United States under permits granted by Decision D 990 which have priority dates earlier than the priority dates of the permits under which the Department is diverting.

In Decision D 1275 it was said in the footnote on page 28 that Decision D 990 limited direct diversion from the Delta under Application 5626 to the water available at Shasta Dam and that this effectively excluded July and August from the season for such diversion for the reason that no water was found available during July and August at Shasta Dam. Upon further consideration and analysis it appears that this conclusion is not entirely correct. It is true that July and August were excluded from the season of diversion at Shasta Dam. However, this was not because unappropriated water was found to be entirely lacking during these months but was because such water is available so seldom and in relatively such small quantities during these months that their inclusion in the season of diversion was not justified. This is not to say that such unappropriated water as is available at Shasta Dam during July and August may not be diverted from the Delta under Application 5626.

Paragraph 1-b of the order in Decision D 1275 limits the Department's 1927 right to divert from various points, including those in the Delta, to the quantity of water that would be available at Oroville Dam in the same way that the right of the United States, under its 1927 priority to divert from the Delta, was limited by Paragraph 4 of the order in Decision D 990 to the quantity available at Shasta Dam. The same limitation as in Paragraph 1-b of the order in Decision D 1275 will be included in Paragraph 1-c relating to Application 14443 as to water of the Feather River.

It is concluded that the seasons of diversion from the Delta in the permits granted to the Department should include July, August, and September.

Seasons of Diversion from the Feather River

The Department did not offer any additional evidence regarding the availability of unappropriated water from the Feather River but contended that the study previously introduced shows water available in the Feather River during July, August, and September in some years and that the quantities and frequency are actually greater. Year-round seasons of diversion from the Feather River, excluding August for storage, were requested so as to permit beneficial use of unappropriated water when it occurs. No other evidence or argument was offered on this subject.

The evidence shows unappropriated water in the Feather River during July, August, and September in some years, but so infrequently that these months would not be included in the season of diversion as a general rule (see Decision D 1275, p. 23). However, the unique ability of the Department to make beneficial use of the water despite the uncertainty of the supply, and to ascertain precisely when and how much unappropriated water is available, justifies year-round seasons of diversion, excluding August for storage, in the permits issued to the Department to divert from the Feather River.

### Date for Completion of Construction

The Department introduced DWR Exhibit 121, which provides the most recent official estimate of the dates for completion of construction of various components of the State Water Project. The data contained in DWR Exhibit 121 were not questioned; Paragraph 8 of the order in Decision D 1275 will be revised accordingly.

### Protection of Fish and Wildlife

An agreement between the Department of Water Resources and the Department of Fish and Game was admitted as DWR Exhibit 120. This is an agreement as to the flows to be maintained in the Feather River, so Paragraph 27 of the order in Decision D 1275 will be revised to provide that the permit is subject to this agreement and continuing jurisdiction is retained as to the flows in the Delta only.

### Proposed Oroville-Thermalito Power Sales Contract

The Department requested the opportunity to submit the Oroville-Thermalito power sales contract, still being negotiated, at a later date. Several parties asked for the opportunity to comment or request a further hearing on the matter after the contract has been executed. Of course, the Board will have no jurisdiction over the contract itself and could at most consider revision of the Department's permits in light of the contract

terms, if such revision were to appear appropriate.

Jurisdiction for such purpose will be reserved, to be exercised after a further hearing held on the Board's own motion or on motion of any interested party based on adequate grounds.

#### ORDER

IT IS HEREBY ORDERED that the order in Decision D 1275 be amended as follows:

1. Paragraph 1-a is amended to read:

1-a. The water appropriated under permit issued pursuant to Application 5629 shall be limited to the quantity which can be beneficially used and shall not exceed 7,600 cubic feet per second by direct diversion, to be diverted from January 1 to December 31 of each year, and 380,000 acre-feet per annum by storage, to be collected from about September 1 of each year to about July 31 of the succeeding year.

2. Paragraph 1-b is amended to read:

1-b. The water appropriated under permit issued pursuant to Application 5630 shall be limited to the quantity which can be beneficially used and shall not exceed 1,400 cubic feet per second by direct diversion, to be diverted from January 1 to December 31 of each year, and 380,000 acre-feet per annum by storage, to be collected from about September 1 of each year to about July 31 of the succeeding year, provided the quantity of water appropriated by direct diversion shall be limited to such quantity as would be available for appropriation at Oroville Dam.

3. Paragraph 1-c is amended to read:

1-c. The water appropriated from the Feather River under permit issued pursuant to Application 14443 shall be limited to the quantity which can be beneficially used and shall not exceed 1,360 cubic feet per second by direct diversion, to be diverted from January 1 to December 31 of each year, and 3,500,000 acre-feet per annum by storage, to be collected from about September 1 of each year to about July 31 of the succeeding year, provided the quantity of water appropriated by direct diversion shall be limited to such quantity as would be available for appropriation at Oroville Dam; the water appropriated from the Sacramento-San Joaquin Delta channels shall not exceed 6,185 cubic feet per second by direct diversion and 42,100 acre-feet per annum by storage, to be diverted and collected from January 1 to December 31 of each year.

4. Paragraph 1-d is amended to read:

1-d. The water appropriated under permit issued pursuant to Application 14444 shall be limited to the quantity which can be beneficially used and shall not exceed 11,000 cubic feet per second by direct diversion, to be diverted from January 1 to December 31 of each year, and 3,500,000 acre-feet per annum by storage, to be collected from about September 1 of each year to about July 31 of the succeeding year.

5. Paragraph 1-e is amended to read:

1-e. The water appropriated under the permit issued

pursuant to Application 14445A shall be limited to the quantity which can be beneficially used and shall not exceed 2,115 cubic feet per second by direct diversion and 44,000 acre-feet per annum by storage, to be diverted and collected from January 1 to December 31 of each year.

6. Paragraph 1-f is amended to read:

1-f. The water appropriated under permit issued pursuant to Application 17512 shall be limited to the quantity which can be beneficially used and shall not exceed 1,100,000 acre-feet per annum by storage, to be diverted from Italian Slough and Sacramento-San Joaquin Delta channels and to be collected from San Luis Creek from January 1 to December 31 of each year.

7. Paragraph 1-g is amended to read:

1-g. The water appropriated under permit issued pursuant to Application 17514A shall be limited to the quantity which can be beneficially used and shall not exceed 135 cubic feet per second by direct diversion, to be diverted from January 1 to December 31 of each year.

8. Paragraph 8 is amended to read:

8. Construction work shall be completed on or before December 1, 1980.

9. Paragraph 15 is amended to read:

15. Until further order of the Board, permittee shall make no direct diversions (except under permits issued

pursuant to Applications 5629 and 14444) and shall not collect water to storage during the period from April 1 through June 30 at any time the maximum surface zone chloride ion content of the San Joaquin River at Blind Point exceeds 250 parts per million. If Blind Point is not used as a monitoring station, permittee shall establish a correlation with some other station satisfactory to the Board to provide the necessary data on quality at Blind Point.

10. Paragraph 27 is amended to read:

27. These permits shall be subject to the "Agreement and Stipulation Concerning the Operation of the Oroville Division of the State Water Project" entered into July 19, 1967, filed of record as DWR Exhibit 120 in the hearing on reconsideration of Decision D 1275 in the matter of Applications 5629, etc., of the California Department of Water Resources. The State Water Rights Board reserves continuing jurisdiction over these permits for the purpose of formulating terms and conditions relative to flows to be maintained in the Delta for the protection of fish and wildlife.

11. Paragraph 28 is added to read:

28. The Board reserves continuing jurisdiction over these permits for the purpose of reviewing the Oroville-Thermalito power sales contract upon request of any interested party and, after a hearing, making such revisions in permit conditions as may be appropriate.

12. Paragraph 29 is added to read:

29. The Department may divert in compliance with special conditions in these permits and all applicable laws only when it can do so without interfering with the exercise of vested rights, including those rights of the United States under permits granted by Decision D 990 which have priority dates earlier than the priority dates of the permits under which the Department is diverting.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California.

Dated: November 30, 1967

/s/ George B. Maul  
George B. Maul, Chairman

/s/ Ralph J. McGill  
Ralph J. McGill, Member

/s/ W. A. Alexander  
W. A. Alexander, Member